

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2007-0208, Town of Newport v. Thaddeus Dymon, the court on January 9, 2008, issued the following order:

The petitioner, Town of Newport (Newport), appeals an order of the trial court finding that the respondent, Thaddeus Dymon, was entitled to a jury trial on the issue of just compensation for the land that Newport sought to acquire pursuant to RSA 38:30. Newport argues that RSA 38:30 does not provide the respondent with a right to a jury trial and that, even if it could be so construed, the respondent has waived any such right. We reverse and remand.

We will assume without deciding that parties subject to takings under RSA 38:30 are entitled to a jury trial. Nevertheless, in this case, we conclude that the respondent has waived any such right.

Superior Court Rule 8 provides that a party desiring a trial by jury shall so indicate upon the writ at the time of entry if the plaintiff, and upon the initial appearance card at the time of filing, if the defendant. The rule further provides: "Failure to request a jury trial in accordance with this rule shall constitute a waiver thereof." In this case, the initial appearance filed on behalf of the respondent in April 2004 did not request a jury trial. Although an appearance filed by subsequent counsel for the respondent requested a jury trial, the record before us on appeal indicates that subsequent orders issued by the trial court scheduled the case for a bench trial. The case was bifurcated and the respondent was defaulted on the issues of necessity and title.

Even, if at some point, the respondent attempted to request a jury trial, he waived any such right by his subsequent conduct, including his failure to object to the subsequent scheduling orders. See Danvers Savings Bank v. Hammer, 122 N.H. 1, 3-4 (1982); SNCR Corp. v. Greene, 152 N.H. 223, 224 (2005) (conduct or acquiescence inconsistent with intention to insist on jury trial may constitute waiver thereof).

Accordingly, we conclude that the trial court's sua sponte decision to schedule the damages issue for a jury trial was error.

Reversed and remanded.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**